



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 490.

BENJAMIN F. NELSON, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.

No. 491.

ANSELM C. BOSSARD, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.

No. 492.

CLARENCE I. McNAIR, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MINNESOTA.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

These are writs of error sued out for the reversal of an order of the Circuit Court of the District of Minnesota, Third Division, adjudging the above named plaintiffs in error, severally and individually, in contempt of court for disobedience of a previous order requiring them to answer certain questions and produce for inspection and evidence certain documents at an

examination held in connection with a suit in equity brought by the United States against the General Paper Company and a large number of other corporations under the Act of Congress entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

The suit in equity, to which the order referred to was ancillary, is the same as that upon which the orders were based which have been brought before this court for review in the appeals of Lewis M. Alexander, George A. Whiting, William Z. Stuart and General Paper Company, being Nos. 381, 382, 383 and 384 of this term's calendar, which appeals have been assigned for argument at the same time as, and in connection with, the foregoing writs of error. We shall refer to the brief filed upon these appeals for copies of the bill of complaint and answers of defendants in this suit in equity.

The cause being at issue upon the bill of complaint, answers and replication, a special examiner was appointed by the Circuit Court to take testimony, and upon a petition filed by the United States subpoenas *duces tecum* were issued, addressed to B. F. Nelson, individually and as president of the Hennepin Paper Company, A. C. Bossard, individually and as treasurer of the Itasca Paper Company, and C. I. McNair, individually and as general manager of the Northwest Paper Company, commanding each of them to appear before the special examiner in the city of St. Paul on the 24th day of July, 1905, then and there to be examined and to give evidence on the part of the petitioner in said cause, and directing each of them to bring and produce at the time and place aforesaid the following books, papers and documents of their respective companies, to-wit:

First. The account books, including the journals, ledgers and other books kept by or under the control of such defendant, or the witness as such officer:

(A.) Showing the amounts, kinds or grades of paper manufactured by such defendant, and sold by or through the defendant General Paper Company as the exclusive sales agent of such defendant, since the 5th day of July, 1900, and also showing where the said paper so manufactured and sold has been shipped, since the 5th day of July, 1900, or since the date when the particular defendant entered into contract relations with the General Paper Company.

(B.) Showing the prices, amounts or credits received for such paper from the defendant General Paper Company, between the dates last mentioned and the present time, including entries showing the manner in which the prices and amounts received or realized by such defendant for any

or all of its products so sold by or through the defendant General Paper Company, have been equalized with the prices and amounts received or realized by any or all of the other defendant companies of which the defendant General Paper Company is and has been the exclusive sales agent, for any and all of their products or for similar products, between said dates and the present time.

(C.) Showing the amounts and proportions of the earnings or profits of the defendant General Paper Company received by such defendant, from or through the defendant General Paper Company either directly or indirectly, either in the form or dividends or in the form of rebates, credits or otherwise, between said dates, and the present time.

Second. All contracts, agreements, writings and account books, including journals, ledgers and other books, kept by or under the control of such defendant or the witness as such officer, showing the agreement, arrangement or understanding under and pursuant to which and the manner in which the prices and amounts realized by such defendant, upon the various kinds and grades of paper manufactured by it, and sold by or through the defendant General Paper Company, are and have been, since said dates, equalized or the profits arising from the sale of such paper distributed or apportioned, as between such defendant and other defendants manufacturing and selling through the defendant General Paper Company similar kinds or grades of paper, or among all of the defendants manufacturing similar kinds or grades of paper, and then and there to testify and the truth to say, in a certain matter of controversy in said court depending between The United States of America complainant and General Paper Company *et al.* defendants, on the part of said complainant, hereof fail not. (Transcript, pp. 33-38.

The Hennepin Paper Company, the Itasca Paper Company and the Northwest Paper Company, mentioned in said subpoenas *duces tecum*, are three of the corporations which are named as defendants in said equity suit, all of them being located and doing business in the State of Minnesota and having their mills situated in said state, and the first two having been incorporated under its laws.

The witnesses above named having appeared before the examiner in obedience to the subpoenas *duces tecum*, acting under the advice of counsel, refused to answer certain questions which were asked of them and to produce for inspection by counsel for the United States and to be offered in evidence certain documents which they were asked to produce for that

purpose; and thereupon a petition was filed in the Circuit Court setting forth all the prior proceedings and asking for an order requiring said witnesses to appear before the judges of the circuit court and show cause why they should not be required to answer each and every of the said questions and to comply with each and every of the said requests above referred to. This petition contained various allegations, founded upon information and belief, of the materiality of the evidence desired and its tendency to substantiate the charges contained in the bill of complaint. (Transcript, pp. 39-52.)

An order to show cause as aforesaid was issued returnable on the 21st day of September, 1905. Upon the hearing answers were filed by the said witnesses, Nelson, Bossard and McNair, and also by the defendant corporations of which said witnesses were respectively officers, all in similar language and setting forth the same facts in opposition to the prayer of the petition as were afterwards set forth in the answers filed by the witnesses in the subsequent contempt proceedings and which are hereinafter set forth in full.

The court not being satisfied with these answers made an order dated October 7th, 1905, the substantial portions of which are as follows:

"Now therefore, after hearing counsel, it is ordered, adjudged and decreed: that the said witnesses Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair be and they are hereby each of them directed to appear before Robert S. Taylor, special examiner in the above entitled action, at nine o'clock in the forenoon of October 12, 1905, in the United States district court room in the city of St. Paul, State of Minnesota, and they are each of them directed then and there to answer each and every of the questions put to them respectively by the counsel for said petitioner, The United States of America, as set forth in the petition herein and the schedule thereunto annexed; and the said witnesses are severally and respectively directed to produce before said examiner, at such time and place, the books and papers particularly specified in the *subpoenas duces tecum* heretofore served upon them and mentioned in said petition and the schedule of refusals thereto annexed, and to permit petitioner's counsel, at such time and place, and at any adjournment of said hearing before said examiner, to examine and introduce in evidence such portions of such books and papers as show or contain the particular matters and things specified in such subpoenas.

"It is further ordered that in the event the said witnesses, or

either of them, shall refuse to comply with this order, either in whole or in part, the petitioner shall be at liberty, by appropriate petition, to inform the court of such refusal in order that such proceedings may be had as may be proper or necessary to the investigation and punishment of the contempt involved in such refusal and to the further enforcement of this order" (Transcript, pp. 54-56.)

And the said witnesses Benjamin F. Nelson, A. C. Bossard, Clarence I. McNair, and the said defendants Hennepin Paper Company, Itasca Paper Company and Northwest Paper Company, thereupon severally and jointly excepted to this order and every part thereof, and severally and jointly prayed that an appeal therefrom be allowed to the Supreme Court of the United States. (p. 55.)

And the court being of the opinion that this order does not constitute a final decision, refused to allow such an appeal on the part of either of said witnesses or either of said defendants, or on the part of all of them jointly, to which ruling the said witnesses and the said defendants severally and jointly excepted. (pp. 55, 56.)

The circuit court, in overruling the objections interposed by the witnesses and the corporations of which they are officers, expressly states in the opinion filed by Judge Van Devanter that its decision is controlled by the case of *Brown vs. Walker*, 161 U. S. 591, which it regarded as deciding against the plaintiffs in error all the questions involved in these cases. (Transcript, pp. 278, 286.)

In obedience to the foregoing order Nelson, Bossard and McNair appeared again before the examiner and again, upon the advice of counsel, repeated their refusals to answer the questions and comply with the requests previously made of them; and thereupon a petition was filed by the United States, which recited all the foregoing proceedings and ended with the following prayer:

"Wherefore your petitioner respectfully prays that the said witnesses, Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair and each of them be forthwith adjudged to be in contempt of this court for and on account of their said disobedience of the said order, and that they and each of them be subjected to such penalties in connection therewith as may to the court seem just and proper for the preservation of the dignity of this court and the further enforcement of the said order." (Transcript, pp. 2-4.)

Upon the hearing of this petition answers were filed by the said Nelson, Bossard and McNair, all in substantially the same

language, setting forth their several relations to the several defendant companies above named and also to the defendant, General Paper Company. Except for the statements of such relations, the answers are all alike. These special relations as shown in their answers are as follows:

Nelson is a director and president of Hennepin Paper Company and the owner and holder of stock in said company of the par value of \$49,000.00. He is also a director of General Paper Company and the owner and holder of stock in said General Paper Company of the par value of \$2,250.00.

Bossard is a director and the manager and treasurer of Itasca Paper Company and the owner and holder of stock in said company of the par value of \$40,000.00. He is also a director of General Paper Company and the owner and holder of stock in said company of the par value of \$3,000.00.

The two companies just named, it will be remembered, were incorporated under the laws of Minnesota.

McNair is a director and the general manager of Northwest Paper Company and the owner and holder of stock in said company of the par value of \$2,500.00. This corporation was organized under the laws of West Virginia, and is in danger of forfeiting its license to do business in Minnesota. He is also a director of General Paper Company and the owner and holder of stock in said company of the par value of \$6,000.00.

With the exception of the differences growing out of their special relations to these different corporations, and of the particular origin and liability of the Northwest Paper Company as just stated, the answers are all alike and it will be sufficient here to set forth that of the witness Benjamin F. Nelson, which is as follows:

"Now comes Benjamin F. Nelson and answering the charges of contempt of court made by the complainants above named in their petition filed in this court on this 12th day of October, A. D. 1905, alleges and shows unto the court as follows:

"That this respondent is a director and the president of Hennepin Paper Company, one of the defendants in the cause mentioned in said petition and the papers and proceedings therein referred to wherein The United States of America are the complainants and General Paper Company and others are defendants, and is also the owner and holder of stock in said Hennepin Paper Company of the par value of forty-nine thousand dollars (\$49,000.00), and that the books and papers referred to in said petition and in relation to which this respondent is charged with contempt are the books and papers of said Hennepin Paper Company and not of this respondent, and are subject

to the control of said Hennepin Paper Company and not of this respondent;

"That this respondent is also a director of General Paper Company, another of the defendants in the above mentioned cause, and the owner and holder of stock in said General Paper Company of the par value of two thousand two hundred and fifty dollars (\$2,250.00); that all the matters concerning which the questions referred to in said petition were asked and for refusing to answer which this respondent is charged with contempt of court, as stated in said petition, came to this respondent's knowledge exclusively as president and a director of said Hennepin Paper Company, or as a director of said General Paper Company in the conduct of matters entrusted to him as such director or president, and which said companies, from the nature of the case, were compelled to entrust to this respondent as such director or officer; that said Hennepin Paper Company and said General Paper Company have objected and do object, and this respondent has objected and does object to the production of said books and papers for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause; and that said Hennepin Paper Company and said General Paper Company have objected and do object, and this respondent has objected and does object to said questions and to his being required to answer the same for the reasons hereinafter set forth, and upon the advice of counsel this respondent has refused to submit said books and papers to counsel for complainants for inspection and introduction in evidence in said cause or to answer said questions. Said objections and refusals are based upon the following reasons:

"1. That the materiality of said books and papers and of the questions aforesaid in the cause mentioned in said petition has not been established so as to authorize a court of equity to order the inspection, production and introduction in evidence of said books and papers or the answering of said questions, and that the same are not material, relevant or competent evidence in said cause; that said books and papers contain and the answers called for by said questions would disclose matters of importance relating to the business of said Hennepin Paper Company and said General Paper Company in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of both of said companies to make public, and this respondent submits that he ought not to be required to disclose any portions of said books or papers or to answer any of said questions except on a proper showing that the same are material to said cause to establish some issue there-

in, and showing that the same are not privileged for the protection of the defendants above named.

"2. That one of the purposes of said complainants in instituting said cause and in demanding the inspection, production and introduction in evidence of said books and papers and in asking the questions aforesaid is to establish and to compel said Hennepin Paper Company and said General Paper Company, and this respondent as such director or officer of each of said defendants, to furnish to said complainants evidence tending to establish that said Hennepin Paper Company and said General Paper Company have been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and Monopolies," approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, and to subject said Hennepin Paper Company and said General Paper Company to the penalties for such violations imposed by said act, and that to compel the production by said Hennepin Paper Company or said General Paper Company, through this respondent or otherwise, of said books and papers for inspection and introduction in evidence in said cause, or to compel said defendants, or either of them, through this respondent, to answer said questions, would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

"3. That the alleged acts of said Hennepin Paper Company complained of by said complainants in their said original petition or bill of complaint in said cause, and which said complainants are endeavoring to establish in said cause, would, if committed by said Hennepin Paper Company, involve violations of the laws of the State of Minnesota and would subject said Hennepin Paper Company to forfeiture of its charter and to fines and other penalties under said laws; that to compel said Hennepin Paper Company, through this respondent as one of its officers or otherwise, for the purposes aforesaid to produce said books and papers for inspection and introduction in evidence in said cause or to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and

subject it to the forfeiture of its charter and to fines and other penalties as aforesaid, contrary to the provisions hereinbefore mentioned of the fourth and fifth amendments to the Constitution of the United States.

"4. That in addition to the matters above set forth, the purpose of the complainants in instituting said cause and in demanding the production, inspection and introduction in evidence of the books and papers aforesaid and in asking the questions aforesaid is to obtain from said court a decree enjoining said General Paper Company from carrying on the business for which it was incorporated, and to enjoin the carrying out of, and operation under, certain agency contracts and agreements existing between it and said Hennepin Paper Company, on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value, not only to said General Paper Company, whose entire business practically rests upon them, but are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including the said Hennepin Paper Company, and such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss, both to said General Paper Company and to said Hennepin Paper Company and to this respondent as a stockholder in each of said companies; and that to compel the answering of said questions or the introduction of said books and papers for inspection and introduction as evidence in said cause for the purposes aforesaid by said Hennepin Paper Company or said General Paper Company, or either of them, through this respondent as such director or officer or otherwise, would be contrary not only to the provisions of said fourth and fifth amendment to the Constitution of the United States, but also contrary to the well established rule of the common law, as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty, or anything in the nature of a forfeiture or penalty.

"Further answering this respondent alleges that he ought not to be required to answer the questions or produce for inspection by counsel for the complainants or for the purpose of being offered in evidence in the cause referred to, the books and papers referred to in said petition, not only for the

reasons hereinbefore set forth but also for the following reasons, that is to say:

"1. That one of the purposes of said complainants in instituting said cause and in seeking to require this respondent to answer the questions and produce for inspection by counsel for the complainants and for the purpose of being offered in evidence in said cause the books and papers aforesaid, is to establish and to compel this respondent to furnish to said complainant- evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to, and to subject him to the penalties for such violations imposed by said acts, and that to compel him to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books and papers, would be contrary to the provisions hereinbefore referred to of said fourth and fifth amendments to the Constitution of the United States.

"2. That the alleged acts of said Hennepin Paper Company and of said General Paper Company complained of by the complainants in their said original petition or bill of complaint in said cause, and which said complainants are endeavoring to establish in said cause, would, if committed by said defendant companies, involve certain violations of the laws of the State of Minnesota by this respondent, and would subject him to fine and imprisonment and other penalties and forfeitures under said laws, and that to compel him to answer the questions or to produce for inspection or for the purpose of being offered in evidence in said cause the books and papers aforesaid would be to compel him to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Minnesota and to subject him to fine and imprisonment and other penalties and forfeitures as aforesaid, contrary to the provisions hereinbefore referred to of said fourth and fifth amendments to the Constitution of the United States.

"3. That one of the purposes of said complainants in instituting said cause and in seeking to require this respondent to answer the questions and produce for inspection by counsel for the complainants and for the purpose of being offered in evidence in said cause the books and papers aforesaid, is to establish and to compel this respondent to furnish to said complainants evidence tending to establish the allegations of the original petition or bill of complaint in said cause, which, if established, will result in subjecting this

respondent to loss or detriment in the nature of a penalty or forfeiture, in that the said Hennepin Paper Company, of which this respondent is a stockholder as aforesaid, will be subjected under the laws of the State of Minnesota to fines and other penalties, including the forfeiture of its charter, resulting in the virtual forfeiture of the stock of this respondent in said defendant company, and in the loss and forfeiture to a large extent of the value of the interest of this respondent in said corporation, and that the contracts made through said General Paper Company as its sales agent by said Hennepin Paper Company under and pursuant to the agency contracts herein referred to between said Hennepin Paper Company and said General Paper Company will be virtually annulled and the property rights of said Hennepin Paper Company in said contracts destroyed; that there are a large number of such contracts outstanding under which large sums of money are due to said Hennepin Paper Company, all of which, as this respondent is advised and believes, will be or may be forfeited and lost to said defendant and to this respondent as a stockholder therein in case the illegal combination alleged in said original petition or bill of complaint is established by the decree or judgment in said cause; and this respondent alleges that to compel him to answer the questions and produce for inspection and for the purpose of being offered in evidence the books and papers above referred to and which he has declined to answer or produce, if material to said cause, would be contrary to the provisions of said fourth and fifth amendments to the Constitution of the United States, and also contrary to the well established rule of the common law and of equity jurisprudence, that no person shall be compelled to discover any fact or matter which may subject him to forfeiture or penalty or anything in the nature of a forfeiture or penalty.

"And further answering this respondent says that he is advised and believes, and so charges and avers, that the order of this court entered on the 7th day of October, 1905, requiring him to testify as set forth in said petition and to produce the books and papers therein mentioned and described is void for want of power and jurisdiction in said court to enter the same." (Transcript, pp. 58-62.

It was admitted at the hearing upon the contempt proceedings, by joint stipulation, that the stock in the General Paper Company held by Nelson, Bossard and McNair was held by each in trust for and for the use of the particular defendant corporation of which he was an officer. It was also stipulated that

each of said witnesses was the owner of the amount of stock in the particular corporation of which he was an officer set forth in his several answer. (Transcript, pp. 273, 274.) Upon the hearing upon the contempt proceedings all the evidence taken before the examiner at St. Paul was brought to the notice of the court and in addition a great mass of testimony of other witnesses which had been taken before the same examiner at sessions held in the city of Milwaukee in the State of Wisconsin. The Milwaukee testimony is not printed in the transcript upon these writs of error, but is all contained in the record and, so far as material, in the printed transcript in the appeals in this court which appear as Nos. 381, 382, 383 and 384.

Upon this hearing the court adjudged the witnesses in contempt by the following order:

"The above entitled matter came on before the court upon the petition of the above named petitioner, The United States of America this day filed, the report of the special examiner herein also this day filed, the respective answers this day filed by and on behalf of each of the said witnesses, Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair, and upon all the records, files, testimony and exhibits in the above entitled cause, the said witnesses Nelson, Bossard and McNair being personally before the court and appearing by their counsel, Messrs. Winkler, Flanders, Smith, Bottum & Fawsett, and the said petitioner appearing by its counsel, Messrs. Davis, Kellogg & Severance and Robert E. Olds, Esq., and it appearing that pursuant to the order of this court, made and entered on the 7th day of October, 1905, directing the said witnesses, Nelson, Bossard and McNair and each of them, to appear before the said special examiner and answer certain questions and comply with certain requests to produce evidence, the said witnesses did at the time and place directed to appear before said special examiner, but that they and each of them did, contrary to the said order of his court and in willful disobedience thereto and contempt therefor, refuse to answer each and every of the said questions and to comply with each and every of the said requests to produce evidence as therein directed, save and except that four certain questions among those previously propounded to the said witness McNair were not repeated to the said McNair upon his appearance before the said special examiner to said order; and the said witnesses Nelson, Bossard and McNair now expressly consenting that these proceedings, although several as to each of the said witnesses, may be conducted and concluded and judgment pronounced therein as if the contempt charged were joint instead of several, and the said witnesses Nelson, Bossard and McNair now also waiving the issue of any attachment herein;

"Now therefore, after hearing counsel, it is ordered and adjudged that the said witnesses, Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair and each of them, are severally guilty of contempt of this court in having wilfully disobeyed the said order of this court made and entered herein on the 7th day of October, 1905, by refusing to answer the questions and to comply with the requests to produce evidence therein directed to be answered and complied with, and

"It is further ordered and adjudged that the said witnesses, Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair, be and they are each of them severally hereby assessed and fined in the sum of one hundred dollars for their said disobedience of the said order, said fines to be paid to the clerk of this court for the use of the United States as punishment for such contempts; and

"It is further ordered and adjudged: that in addition to the said fines, the said witnesses, Benjamin F. Nelson, A. C. Bossard and Clarence I. McNair and each of them, be imprisoned in the county jail of Ramsey county, Minnesota, each, until his said fine is paid and until he shall fully comply with the said order made and entered on the 7th day of October, 1905, and the whole thereof.

"And on the application of the said Nelson, Bossard and McNair they are severally granted five days within which to prepare and present for allowance a bill of exceptions herein. Dated this 12th day of October, 1905." (Transcript, pp. 297, 298.)

A bill of exceptions was prepared and signed by the judge of the circuit court and contains all of the evidence offered in the contempt proceedings. The various petitions and orders for the allowance of writs of error, bonds, orders of *superse-deas*, and citations in all of these cases are contained in the printed transcript. So far as we know no question arises upon any of these and no further reference will be made to them.

The assignments of error filed by the three plaintiffs in error are the same as the specifications of error hereinafter contained, with the exception of the references to the printed transcript. The assignments of error are to be found upon the following pages of the transcript:

Benjamin F. Nelson, pp. 301-307.

Anselin C. Bossard, pp. 313-317.

Clarence I. McNair, pp. 323-329.

SPECIFICATIONS OF ERROR.

1. Benjamin F. Nelson.

1. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you known of E. A. Edmonds performing any other function or duty in connection with the business of the General Paper Company than as a member of the board of directors or executive committee of the General Paper Company? (Transcript p. 114; marginal p. 622.)

2. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State, if you know, whether the prices received by the various mills have been equalized as to butchers' fiber? (Tr. p. 115; marg. p. 623.)

3. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: During the time the General Paper Company has acted as the selling agent of these defendant mills, state whether there has been in existence an arrangement whereby the prices received through the General Paper Company by the defendant mills for butchers' fiber have been equalized as between the mills. (Tr. p. 115; marg. p. 623.)

4. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether any of the defendant mills not manufacturing butchers' fiber have, through the General Paper Company, compensated those mills manufacturing butchers' fiber for making that class of paper because it was less profitable than other classes of paper. (Tr. p. 115; marg. p. 623.)

5. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know whether any of the defendant mills have been compensated during this time by other defendant mills for making butchers' fiber? (Tr. p. 115; marg. p. 624.)

6. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you ever made any payments to any of the mills making butchers' fiber or made any payments through the General Paper Company to any of the mills making butchers' fiber since the General Paper Company was the exclusive selling agent? (Tr. pp. 115, 116; marg. p. 624.)

7. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you received any statements through any

officer of the General Paper Company as a basis for any payments to compensate any of the defendant mills for making butchers' fiber? (Tr. p. 116; marg. pp. 624, 625.)

8. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know whether the defendant corporations manufacturing hanger paper have had any arrangement whereby the price was equalized which they received from the General Paper Company? (Tr. p. 116; marg. p. 625.)

9. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the defendant corporations manufacturing hanger paper have any arrangement among themselves with the General Paper Company during the year 1904, whereby the General Paper Company allowed each mill a fixed or definite price during that year, and the balance received over and above that price by the General Paper Company was distributed to all the defendant companies manufacturing hanger paper on the basis of their average daily output of that grade of paper? (Tr., p. 116; marg. 625.)

10. The court erred in adjudging said respondent to be guilty of contempt of court for not answering the following question: State, if you know, the basis on which the prices to the defendant companies or any of them for hanger paper sold through the General Paper Company was equalized? And: Was it in any way equalized? (Tr. p. 116; marg. pp. 625, 626.)

11. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the General Paper Company allow or credit or pay each of the corporations defendant, manufacturing hanger paper, a fixed or definite price for such paper for the year 1904, which price was the same to all mills manufacturing that grade of paper, and was the balance over and above that sum divided among all the defendant mills manufacturing that grade of paper in proportion to the average daily output thereof? (Tr. p. 116; marg. p. 626.)

12. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did you ever attend a meeting of the executive committee where that subject (referring to the previous question) was discussed? (Tr. p. 117; marg. p. 626.)

13. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not at those meetings—any of them—you fixed the price for any definite period to be received by the other mills. (Tr. p. 117; marg. 626.)

14. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: I ask you the same question as to the equalization of prices, which you have refused to answer, as to the years 1900, 1901, 1902, 1903, and the present year—1905. (Tr. p. 117; marg. p. 627.)

15. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State, if you know, how the prices are fixed to the defendant mills for news print paper? (Tr. p. 117; marg. p. 627.)

16. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Was there any arrangement between the General Paper Company and any of the defendant mills whereby news print paper was sold to the General Paper Company or by them for a definite, fixed price during any of the period that that company has been the general agent? (Tr. pp. 117, 118; marg. p. 628.)

17. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether, if you know, that price was less than the final price settled for by the General Paper Company with the defendant mills. (Tr. p. 118; marg. p. 628.)

18. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether the balance over and above that fixed price was divided among the defendant mills. (Tr. p. 118; marg. p. 628.)

19. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the defendant corporations manufacturing news print paper or any grade of paper have any arrangement among themselves with the General Paper Company during any time since the organization of the General Paper Company, whereby the General Paper Company allowed each mill a fixed and definite price during any period, and the balance received over and above that price by the General Paper Company was distributed to all the defendant companies manufacturing any class of paper on the basis of their average daily output thereof. (Tr. p. 118; marg. p. 628.)

20. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Was there any such arrangement as to news print paper? (Tr. p. 118; marg. p. 629.)

21. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Was there any arrangement whereby the General Paper Com-

pany, as the general sales agent, equalized the prices received for news print paper among the defendant companies? (Tr. p. 118; marg. p. 629.)

22. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the General Paper Company deduct any more than three per cent commission which it was to receive under its contract with your company on your sales? (Tr. 118, 119; marg. 629.)

23. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did it not, as a matter of fact, in the first instance, deduct all over and above a fixed definite price? (Tr. 119; marg. p. 629.)

24. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: What dividends has your company received or you for your company, on the stock held in the General Paper Company? (Tr. p. 119; marg. p. 630.)

25. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you ever received any dividends from the General Paper Company, or has your company ever received any dividends on the stock it holds in that company? (Tr. p. 119; marg. p. 630.)

26. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Does the report of the sales agent show the prices which the General Paper Company paid to the mills? (Tr. p. 119; marg. p. 630.) The witness answered this question by saying he did not know.

27. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not these reports show the basis of the division or equalization, rather, of prices between the defendant companies. (Tr. p. 121; marg. pp. 632, 633.)

28. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the profits of the General Paper Company? (Tr. p. 121; marg. p. 633.)

29. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have the board of directors, the executive committee, or the stockholders at any time during the time you have been a director of the General Paper Company fixed the price of any grade of paper to be paid to each of the defendant companies by the General Paper Company or through the General Paper Company? (Tr. p. 121; marg. pp. 633, 634.)

30. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not the executive committee, the board of directors, or the stockholders of the General Paper Company did, during the year 1904, or at any time since the organization of the General Paper Company, fix the price at which the General Paper Company would sell any grade of paper in any community or district or fix a minimum price? (Tr. p. 121; marg. p. 634.)

31. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you discussed those prices or fixed any price of paper to be sold for the defendant companies by the General Paper Company as a board of directors or stockholders or as an executive committee? (Tr. p. 122; marg. p. 634.)

32. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Whether there was not during the winter of 1900, or the fall of 1899, a good deal of talk between the different manufacturers of paper in Minnesota and Wisconsin about eliminating competition. (Tr. p. 123; marg. p. 637.)

33. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: I ask you, did you talk with any of the gentlemen who represent any of these defendant mills, in the spring of 1900, before the organization of the General Paper Company, about organizing a corporation to act as the general selling agent in order to eliminate competition? (Tr. p. 123; marg. pp. 637, 638.)

34. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books of the Hennepin Paper Company show the amount, kinds and grades of paper manufactured by the Hennepin Paper Company? (Tr. p. 125; marg. p. 640.)

35. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the kinds and grades of paper sold by or through the defendant General Paper Company as the exclusive sales agent of the Hennepin Paper Company, since the 5th day of July, 1900? (Tr. p. 125; marg. p. 640.)

36. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they also show where the said paper manufactured and sold has been shipped since the 5th day of July, 1900? (Tr. p. 125; marg. p. 640.)

37. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether those books show the prices, amounts of credit, received for such paper from the General Paper Company between the 5th day of July, 1900, and the present time, including entries showing the manner in which the prices and amounts received or realized by the Hennepin Paper Company for any and all of its products so sold by or through the defendant General Paper Company have been equalized with the prices and amounts received or realized by any or all of the other defendant companies of which the General Paper Company is or has been the exclusive sales agent in any and all of their products and for similar products between the 5th day of July, 1900, and the present time? (Tr. p. 125; marg. p. 640.)

38. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do your books show the amounts and proportion of the earnings or profits of the General Paper Company received by the defendant Hennepin Paper Company from or through the defendant General Paper Company, either directly or indirectly, either in the form of dividends or in the form of rebates, credits or otherwise, between the 5th of July, 1900, and the present time? (Tr. p. 125; marg. p. 641.)

39. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the prices received by your company for paper manufactured by it and sold by the General Paper Company? (Tr. p. 125; marg. p. 641.)

40. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the amount of dividends received from the General Paper Company? (Tr. pp. 125, 126; marg. p. 641.)

41. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the places where the product of the Hennepin Paper Company mill is sold and to what States and Territories shipped? (Tr. p. 126; marg. p. 641.)

42. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books, journals or ledgers of the Hennepin Paper Company show any agreement or arrangement or understanding under and pursuant to which and the manner in which the prices and amounts realized by the Hennepin

Paper Company upon various grades of paper manufactured by it and sold by or through the defendant The General Paper Company are and have been, since the 5th day of July, 1900, equalized or the profits arising from the sale of such paper distributed or apportioned as between the defendants? (Tr. p. 126; marg. p. 642.)

43. The court erred in adjudging said respondent to be guilty of contempt of court in refusing to submit to the inspection of counsel for the Government, or to allow them or any part of them to be put in evidence, the books and papers called for by counsel for complainant, and which had been produced and were in court at the time of the examination of said respondent. (Tr. pp. 126, 127; marg. p. 643.)

44. The court erred in holding that the respondent is not privileged, and that Hennepin Paper Company, of which this respondent is an officer, was not privileged, under the fourth amendment to the Constitution of the United States, which provides that the right of the people to be secure in their papers, houses and effects against unreasonable searches and seizures should not be violated, from producing for inspection by counsel for the United States of America, and for introduction in evidence in the cause above mentioned, the books and papers which this respondent was required and refused to produce.

45. The court erred in holding that this respondent and said Hennepin Paper Company were not privileged, under the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, from answering the questions and producing for inspection by counsel for the complainant and for introduction in evidence in the cause aforesaid the books and papers aforesaid, which this respondent refused to answer or to produce for the purposes aforesaid.

46. The court erred in holding that the provisions of an act of Congress, approved February 25, 1903, purporting to give immunity from prosecution to witnesses in certain cases for or on account of transactions, matters or things concerning which they may testify, required this respondent to answer the questions or produce the books and papers aforesaid for the purposes aforesaid.

47. The court erred in holding that said act gave said respondent or said Hennepin Paper Company immunity from prosecution under the laws of the State of Minnesota, for or on account of any of the transactions, matters or things con-

cerning which he was directed to testify and to produce books and papers as aforesaid.

48. The court erred in holding that said act of Congress is not unconstitutional and void so far as it purports to give this respondent or said Hennepin Paper Company immunity from prosecution under the laws of the State of Minnesota, for or on account of any of the transactions, matters or things concerning which he was directed to testify and to produce books and papers as aforesaid.

49. The court erred in holding that said act of Congress approved February 25, 1903, gave said Hennepin Paper Company immunity from prosecution under the act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," for or on account of any of the transactions, matters or things concerning which he was directed to testify and produce books and papers as aforesaid.

50. The court erred in holding that the order of said court entered October 7, 1905, requiring him to answer said questions and to produce said books and papers was valid and effective.

51. And in not holding that said order of said court entered October 7, 1905, was void for want of power and jurisdiction in said court to enter and enforce the same.

2. Anselm C. Bassard.

1. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: What basis of price does the General Paper Company make to your company (Itasca Paper Company) for the product of your mill? (Tr. p. 129; marg. p. 647.)

2. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the defendant corporations manufacturing news print paper have any arrangement among themselves and with the General Paper Company during the year 1904 whereby the General Paper Company allowed each mill a fixed or definite price during that year and the balance received over and above that price by the General Paper Company was distributed to all the defendant companies manufacturing news print paper on the basis of their average daily output of that grade of paper? (Tr. p. 130; marg. p. 648.)

3. The court erred in adjudging the respondent to be guilty of contempt of court in not answering the following question: Did your company have any arrangement with the General

Paper Company and the other defendant companies for fixing the price of news print paper? (Tr. p. 130; marg. p. 648.)

4. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did your company have any arrangement with the General Paper Company and the other defendant companies for fixing the price received by your company and the other companies on news print paper during any of the time while the General Paper Company has been the exclusive selling agent of your company? (Tr. p. 130; marg. p. 649.)

5. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you had any arrangement for equalizing those contracts between the defendant companies manufacturing news print paper, during the time the General Paper Company has been the exclusive selling agent of your company? (Tr. p. 130; marg. p. 649.)

6. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether the General Paper Company during this time allowed or paid to your company and each of the other defendant companies manufacturing news print paper a fixed or definite price for such paper, in the first instance, which price is the same to all manufacturing that grade of paper, and whether the balance over and above that sum was divided among the defendant mills manufacturing that grade of paper in proportion to the average daily output thereof. (Tr. p. 130, 131; marg. p. 649.)

7. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did you have any basis agreed on with the General Paper Company for the division,—or for the equalization of prices? (Tr. p. 131; marg. p. 650.)

8. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether you ever attended a meeting of the executive committee or the directors or the stockholders at which the price of news print paper, or any other grade of paper, was fixed by the executive committee, or the directors, or the stockholders of the General Paper Company. (Tr. p. 131; marg. p. 650.)

9. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: I mean the price to be received or to be received by any of the defendant companies for paper manufactured by it and sold through the General Paper Company. (Tr. p. 131; marg. p. 650.)

10. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether the executive committee, board of directors or stockholders of the General Paper Company did in the year 1904 or at any other time since your company has been a member of the General Paper Company, fix the price at which the General Paper Company would sell any grade of paper in any community or district, or fix the minimum price thereof. (Tr. p. 131; marg. p. 650.)

11. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following questions: State whether your company paid any more than the 3% which the Itasca Paper Company agreed to pay to the General Paper Company under its contract as a commission on all sales effected by the General Paper Company for your company? And: Was any more than that 3% first deducted by the General Paper Company from the price of paper which it sold for your company during any of this time? (Tr. p. 131; marg. p. 651.)

12. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has your company received any dividends from the General Paper Company on the stock it holds in that Company? (Tr. p. 132; marg. p. 651.)

13. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you received any dividends for your company? If so, state how much. (Tr. p. 132; marg. p. 651.)

14. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether in lieu of dividends, all sums over and above a flat price have been distributed among the defendant companies after deducting the expenses of management of the General Paper Company. (Tr. p. 132; marg. p. 651.)

15. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books of the company show the amount of paper manufactured by the Itasca Paper Company? (Tr. p. 132; marg. p. 652.)

16. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the kinds and grades of paper manufactured by your company? (Tr. p. 132; marg. p. 652.)

17. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do those books show the amount, kinds and grades manufac-

tured by your company and sold by or through the General Paper Company as the exclusive sales agent of the defendant, Itasca Paper Company, since the date of the contract by which it is made the general sales agent, and also show where the said paper is sold and into what territory shipped? (Tr. p. 133; marg. p. 653.)

18. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do those books show the prices, amount and credits received for such paper from the General Paper Company since the General Paper Company has been the exclusive sales agent of your company? (Tr. p. 133; marg. p. 653.)

19. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the prices, amounts or credits received for such paper from the defendant General Paper Company, between the 5th day of February, 1902, and the present time, including entries showing the manner in which the prices and amounts received by the defendant Itasca Paper Company, for any or all of its products so sold by or through the defendant General Paper Company have been equalized? (Tr. p. 133; marg. p. 653.)

20. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the way the prices have been equalized with the amounts received by other defendant companies for which the General Paper Company is the exclusive sales agent? (Tr. p. 133; marg. p. 653.)

21. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the net amount received by your company for all papers sold by the General Paper Company? (Tr. p. 133; marg. p. 653.)

22. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do those books show the amounts and proportions of the earnings and profits of the General Paper Company received by the defendant, Itasca Paper Company, from or through the defendant, General Paper Company, either directly or indirectly, either in the form of dividends or in the form of rebates, credits or otherwise, between the 5th day of February, 1902, and the present time? (Tr. p. 133; marg. p. 654.)

23. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following

question: Do the books, including the journals, ledgers and other books kept by the Itasca Paper Company show the agreement, arrangement or understanding, under and pursuant to which and the manner in which the prices and amounts realized by the defendant, Itasca Paper Company, upon the various kinds and grades of paper manufactured by it and sold by or through the General Paper Company are and have been since the 5th day of February, 1902, equalized, or the profits arising from such paper distributed or proportioned as between the said defendant, the Itasca Paper Company, and the other defendants manufacturing and selling through the defendant, General Paper Company, similar kinds or grades of paper. (Tr. pp. 133, 134; marg. p. 654.)

24. The court erred in adjudging said respondent to be guilty of contempt of court in refusing to submit to the inspection of counsel for the Government, or to allow them or any part of them to be put in evidence, the books and papers called for by counsel for complainant, and which had been produced and were in court at the time of the examination of said respondent. (Tr. p. 134; marg. p. 655.)

3. Clarence I. McNair.

1. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books of the Northwest Paper Company show what you manufacture? (Tr. p. 138; marg. p. 661.)

2. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know of E. A. Edmonds having performed any other function for the General Paper Company than that of a director? (Tr. p. 138; marg. p. 662.)

3. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know whether any of the defendant companies during any of the time which your company has been connected with the General Paper Company, paid through the General Paper Company to the companies making butchers' fiber any money to compensate those companies, or any of them, for making such butchers' fiber, because it was less profitable to make. (Tr. pp. 138, 139; marg. p. 663.)

4. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has your company, or any one of your company, sent any checks or made any payments to E. A. Edmonds, as

pool agent, to be divided up among the mills making butchers' fiber? (Tr. p. 139; marg. p. 663.)

5. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has your company received any statements through any officer or agent of the General Paper Company showing or purporting to show the amount to be paid by your company to compensate other companies in this combination for making butchers' fiber? (Tr. p. 139; marg. p. 663.)

6. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you discussed the subject of equalizing the prices of butchers' fiber at any of the meetings you have attended of the General Paper Company? (Tr. p. 139; marg. p. 664.)

7. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has the executive committee fixed the price to be received by all the defendant companies manufacturing butchers' fiber? (Tr. p. 139; marg. p. 664.)

8. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know whether the price received by any of the defendant mills manufacturing butcher's fiber has been equalized through the General Paper Company? (Tr. p. 139; marg. p. 664.)

9. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Since the General Paper Company has acted as your exclusive selling agent, what basis, if any, has been used for the sale of the product of your mill? (Tr. p. 140; marg. p. 665.)

10. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not any basis has existed whereby all of the mills manufacturing that grade of paper have, through the General Paper Company, equalized the prices each company has received. (Tr. p. 140; marg. p. 665.)

11. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not any basis has existed whereby the prices have been equalized or approximately equalized. (Tr. p. 140; marg. p. 666.)

12. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: What has been the basis for the distribution of the contracts made with publishers by the General Paper Company among the several defendant manufacturers? (Tr. p. 140; marg. p. 666.)

13. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: How have the contracts entered into by the General Paper Company for the sale of news print paper been apportioned among the various defendant mills? (Tr. p. 140; marg. p. 666.)

14. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether or not the defendant corporations manufacturing news print paper have during the time your company has been connected with the General Paper Company, had any agreement among themselves and with the General Paper Company whereby the General Paper Company allowed each mill a fixed or definite price and the balance over and above that price was divided among the defendant companies manufacturing news print paper on the basis of the daily output of that grade of paper. (Tr. pp. 140, 141; marg. pp. 666, 667.)

15. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has any such arrangement existed as to hanger paper? (Tr. p. 141; marg. p. 667.)

16. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do you know of any arrangement having existed between any of the defendant companies whereby a fixed or flat price for hanger paper has been made to the General Paper Company and the balance divided up between the mills making that grade of paper? (Tr. p. 141; marg. p. 667.)

17. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has the board of directors, the executive committee, or the stockholders at any time when you have been present fixed the price of any grade of paper sold for the defendant companies through the General Paper Company? (Tr. p. 141; marg. pp. 667, 668.)

18. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Or fixed the price at which the paper should be sold in any community or district, or the minimum price? (Tr. p. 141; marg. p. 668.)

19. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has your company and the other defendant companies manufacturing news print paper received, in the first instance, from the General Paper Company a fixed and definite price, and the balance over and above that price which was received

by the General Paper Company divided among all the mills on any basis? (Tr. p. 141; marg. p. 668.)

20. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: State whether those books show the amounts, kinds or grades of paper manufactured by the defendant Northwest Paper Company and sold by or through the defendant General Paper Company as the exclusive sales agent of the defendant Northwest Paper Company since the 8th day of April, 1902, or since about the 1st of May, 1902, if that is the date the business commenced. (Tr. p. 142; marg. p. 669, 670.)

21. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books also show where the said paper so manufactured was sold and into what States and Territories it was shipped since the 8th day of April, 1902, or the 1st day of May, 1902? (Tr. pp. 142, 143; marg. p. 670.)

22. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the prices, amounts or credits received from such paper from the defendant the General Paper Company during said dates? (Tr. p. 143; marg. p. 670.)

23. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the manner in which the prices received or realized by the defendant Northwest Paper Company for any and all of its products so sold by or through the General Paper Company have been equalized with the prices and amounts received and realized by all other defendant companies for like grades of paper during the same time? (Tr. p. 143; marg. pp. 670, 671.)

24. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do they show the amounts and proportions of the earnings or profits of the defendant General Paper Company received by the Northwest Paper Company from or through the defendant General Paper Company, either directly or indirectly, either in the form of dividends or in the form of rebates, credits or otherwise, during said time? (Tr. p. 143; marg. p. 671.)

25. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do the books, including journals, ledgers and other books kept by the Northwest Paper Company show any agreement, arrangement or understanding under and pur-

suant to which or the manner in which the prices and amounts realized by the defendant Northwest Paper Company upon various kinds and grades of paper manufactured by it and sold by or through the General Paper Company, since the 8th day of April, 1902, have been equalized or the profits arising from the sale of such paper distributed or apportioned as between the defendant Northwest Paper Company and the other defendants manufacturing and selling through the defendant General Paper Company similar grades of paper? (Tr. p. 143; marg. pp. 671, 672.)

26. The court erred in adjudging said respondent to be guilty of contempt of court in refusing to submit to the inspection of counsel for the Government, or to allow them or any part of them to be put in evidence, the books and papers called for by counsel for complainant, and which had been produced and were in court at the time of the examination of said respondent. (Tr. pp. 142, 144; marg. pp. 669, 672.)

27. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: What dividend has your company received from the General Paper Company? (Tr. p. 144; marg. p. 672.)

28. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you received any dividends for your company on the stock of the General Paper Company? (Tr. p. 144; marg. p. 672.)

29. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has the General Paper Company in the first instance deducted any more than 3% of the gross sales which it had deducted as its commission? (Tr. p. 144; marg. pp. 672, 673.)

30. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Has any sum beyond 3%, deducted by the General Paper Company from the sales made by it for any of the defendant companies, been distributed among all the mills defendant in this case? (Tr. p. 144; marg. p. 673.)

31. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you ever been present when the report of the sales agent has been produced? (Tr. p. 144; marg. p. 673.)

32. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Does that report show the price received by each

of the mills for paper sold by the General Paper Company? (Tr. p. 145; marg. p. 674.)

33. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Have you any copies of the report? (Tr. p. 145; marg. p. 674.)

34. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Does the treasurer's report show the gross and net earnings of the General Paper Company? (Tr. p. 145; marg. p. 674.)

35. The court erred in adjudging said respondent to be guilty of contempt of court in refusing to submit to the inspection of counsel for the Government the copies of the reports called for by counsel for complainants, and which had been produced and were in court at the time of the examination of said respondent. (Tr. p. 145; marg. p. 675.)

36. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Do those reports show the total sum distributed to the defendant mills by the General Paper Company, either as dividends or as earnings or surplus of any kind? (Tr. pp. 145, 146; marg. p. 675.)

37. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: You were asked by Mr. Whiting and others to make the General Paper Company your exclusive selling agent in the spring of 1900, were you not? (Tr. p. 149; marg. p. 681.)

38. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Is it not a fact that several times during the spring of 1900 or the winter of 1900, Mr. George A. Whiting, afterwards the vice-president of the General Paper Company, asked you to join or have your company join the combination and make the General Paper Company its exclusive selling agent? (Tr. pp. 149, 150; marg. pp. 681, 682.)

39. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: And you declined so to do (referring to preceding question) until the spring of 1902? (Tr. p. 150; marg. p. 682.)

40. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Were any threats made against you or your company to induce you or it to become a member of this combina-

tion and make the General Paper Company its exclusive selling agent? (Tr. p. 150; marg. p. 682.)

41. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Is it not a fact that officers of the General Paper Company, in the spring of 1902, threatened to undersell you and ruin your business if you didn't become a member and join the combination and make the General Paper Company the exclusive selling agent of your company? (Tr. p. 150; marg. p. 682.)

42. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: As a matter of fact, did they not undertake to underbid you and run you out of St. Paul and Minneapolis contracts? (Tr. p. 150; marg. p. 682.)

43. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did you exact any promise from the officers of the General Paper Company at the time you made that company the general selling agent of your company to protect your customers against exorbitant prices? (Tr. p. 150; marg. p. 683.)

44. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did you have any agreement or understanding with the officers of the General Paper Company prior to the time that your company made that company its exclusive selling agent that they would keep out of Duluth and not bid for the contracts of the Tribune and the Herald? (Tr. p. 150; marg. p. 683.)

45. The court erred in adjudging said respondent to be guilty of contempt of court in not answering the following question: Did the officers of the General Paper Company bring pressure to bear upon your company to go into the combination, in 1901, or to keep the prices up if you stayed out. (Tr. p. 151; marg. p. 684.)

The witnesses Bossard and McNair also added to their several assignments of errors the same claims of constitutional protection and privilege for themselves and the corporations of which they were officers, and the same objections to the validity of the order of October 7, 1905, which are found in the assignments of errors of the witness Nelson and are included in the latter's specifications of errors numbers 44 to 51, both inclusive.

ARGUMENT.

Except that the proceedings and orders here brought up for review were criminal in their nature and that they have been brought into this court by writs of error, the questions involved in them are in all respects the same as those raised by the appeals of Alexander, Whiting, Stuart, Harmon and the General Paper Company in Nos. 381, 382, 383, 384 and 385 upon the present calendar of this court. The practice followed in bringing the cases to this court for review by writs of error is that recently sanctioned by the decision of this court in *Bessette v. W. B. Conkey Co.*, 194 U. S. 324, the only difference between that case and the present ones being that the latter are cases which involve the construction or application of the Constitution of the United States and in which the constitutionality of a law of the United States is drawn in question.

1 Comp. Stats. of 1901, p. 549.

Under this statute a right of appeal is given directly to the Supreme Court.

The orders sought to be reviewed being ancillary to a suit in equity under the anti-trust act, it may also be urged that the right of review in the Supreme Court is involved in the fact that an appeal from the final decree in the equity suit would lie only to the Supreme Court.

Comp. Stats. of 1901, Supplement for 1903, p. 376.

Pope v. Louisville &c. Ry. Co. 173 U. S., 573.

Carey v. Houston &c. Ry. Co. 161 U. S., 151.

Rouse v. Letcher, 156 U. S., 47.

The plaintiffs in error and the corporations of which they are respectively officers being resident or situated in the State of Minnesota the state statutes which enter into the discussion are not the same as were presented in the appeals above named where the laws of the State of Wisconsin were brought in question.

The Minnesota laws upon the subject of combinations in restraint of trade and of forfeiture of corporate charters, are contained in the following sections of the Statutes of Minnesota, 1894.

§6955. Pools and trusts—Prohibition of

"If any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual shall create, enter into, become a member of or a party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article whatever, or shall create, enter into, become a member of (or) a party to any pool, agreement, combination or confederation to fix or limit the amount or quantity of any commodity or article to be manufactured, mined, produced or sold in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment, as provided in the next section.

§6956. Same—Penalty for violation.

"Any person or corporation found guilty of a violation of this act shall be punished by a fine of not less than one hundred dollars, nor to exceed five thousand dollars, and be imprisoned in the state prison for not less than one year nor more than ten years.

§5962. Action to vacate charter, etc., of corporation.

"An action may be brought by the attorney general in the name of the state for the purpose of vacating the charter, or annulling the existence of a corporation other than municipal whenever such corporation:

First: Offends against any of the provisions of the act or acts creating, altering or renewing such corporation; or,

Second: Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third: Whenever it has forfeited its privileges or franchises by failure to exercise its powers; or,

Fourth: Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

Fifth: Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney general shall bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved; and also in

every other case in which satisfactory security is given to indemnify the state against the costs and expenses to be incurred thereby.

§5970. Corporation adjudged dissolved, when.

"If it is adjudged that a corporation has by neglect, abuse or surrender, forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

For full discussion of all the substantial questions raised by these writs of error, we therefore refer to the brief filed in behalf of the appellants in the appeals above referred to, being Nos. 381, 382, 383, 384 and 385 of the present calendar.

The plaintiffs in error ask that the order of the Circuit Court of the District of Minnesota be reversed.

Respectfully submitted,

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